

<b>WILBUR SPARKS</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,014,493
<b>LEONARD'S METAL, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>LIBERTY MUTUAL INSURANCE</b>	)	
Insurance Carrier	)	

Respondent challenges that Order and contends the evidence fails to establish that claimant's injuries arose out of and in the course of his employment with the respondent. Respondent argues claimant's left leg complaints are due to an ill-fitting prosthesis and a personal risk that has no relationship to his work. Regarding the low back, respondent argues claimant did not work on November 27, 2003, and, moreover, the two individuals who allegedly witnessed claimant's fall both testified they did not. Consequently, respondent requests the Board to reverse the April 28, 2004 Order.

The only issue on this appeal is whether claimant has satisfied his burden of proving that he sustained personal injury by accident arising out of and in the course of his employment with the respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes:

Claimant is from Vietnam and has limited English skills. In 1997, claimant's left foot was amputated and he began wearing a prosthesis. While working for respondent in July 2003, claimant began experiencing pain in his left lower leg at the site of the amputation. Claimant attributed that pain to constantly standing at work. As claimant continued to work, his left leg pain worsened. In August 2003, claimant consulted Dr. Robert L. Eyster, who injected the area of pain.

Despite the ongoing left leg pain, claimant continued to work for respondent. Claimant testified he fell at work in November 2003, while he and a coworker were moving a heavy part. According to claimant, after that fall he experienced pain in his lower back and left knee. Claimant last worked for respondent on December 8, 2003, as he began seeking medical treatment for his symptoms.

The evidence in this claim is quite contradictory. The witnesses whom claimant identified as witnessing his November 2003 fall do not recall such an event. On the other hand, when claimant sought medical treatment he attributed his left leg and low back symptoms to an accident at work. A discharge summary from Via Christi Regional Medical Center with a discharge date of March 30, 2004, reads in part:

The patient is a 36-year-old male admitted for evaluation and treatment of acute severe low back pain associated with acute severe left leg pain and left knee pain. Apparently the persistent severe acute low back pain, left leg pain, and left knee pain were all initiated by an accident at the work site on 11/27/2003. The patient and another worker were lifting a heavy weight when the patient felt his left leg was failing him. He fell and ever since he has complained of persistent severe acute low back pain, acute left leg pain, and left knee pain. After the accident at the work site, he also complained of severe persistent acute pain of the left leg and the left knee. . . .<sup>1</sup>

The record also includes an April 16, 2004 medical report from Dr. Naomi Shields, the surgeon who amputated claimant's left foot. According to that report, claimant also

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<sup>1</sup> P.H. Trans., Cl. Ex. 1 at 1.

provided her a history that he fell at work on November 27, 2003, while moving a heavy part.

This claim hinges on claimant's credibility. Judge Bogart observed claimant testify and also had claimant's testimony from a discovery deposition. In addition, Matt Sok, who denied seeing claimant fall, testified before the Judge. After considering the evidence presented at the preliminary hearing along with the evidence contained in the depositions that were taken for purposes of this claim, the Judge adopted claimant's version of the facts and awarded him preliminary hearing benefits. Accordingly, Judge Bogart found claimant credible. At this juncture, giving some deference to the Judge's findings and conclusions, the Board agrees with the Judge's decision. Therefore, the April 28, 2004 preliminary hearing Order should be affirmed.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.<sup>2</sup>

**WHEREFORE**, the Board affirms the April 28, 2004 preliminary hearing Order entered by Judge Bogart.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 2004.

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BOARD MEMBER

c: Robert R. Lee, Attorney for Claimant  
Elizabeth R. Dotson, Attorney for Respondent and its Insurance Carrier  
Vincent L. Bogart, Special Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>2</sup> K.S.A. 44-534a(a)(2).